

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

NHAN LE TRAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 16-CV-03484-LHK

**ORDER DENYING MOTION TO STAY  
PETITION**

Re: Dkt. No. 7

On October 19, 2016, the government filed a motion to stay petition under 28 U.S.C. § 2255. ECF No. 7. The government's motion requested that, pending the United States Supreme Court's decision in *Lynch v. Dimaya*, 2016 WL 3232911 (Sep. 29, 2016), the Court stay proceedings on Petitioner Nhan Le Tran's ("Petitioner") motion to vacate his conviction. ECF No. 7, at 1.

Under *Landis v. North American Co.*, 299 U.S. 248 (1936), the Court has "discretionary power to stay proceedings in its own court." *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005). In considering whether to exercise its discretion to grant a stay, a court should weigh three factors: "[1] the possible damage which may result from the granting of a stay, [2] the hardship or inequity which a party may suffer in being required to go forward, and [3] the orderly

1 course of justice measured in terms of the simplifying or complicating of issues, proof, and  
 2 questions of law which could be expected to result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d  
 3 265, 268 (9th Cir. 1962). “The proponent of a stay bears the burden of establishing its need.”  
 4 *Clinton v. Jones*, 520 U.S. 681, 708 (1997) (citing *Landis*, 299 U.S. at 255). If there is “even a fair  
 5 possibility” of harm to the opposing party, the moving party “must make out a clear case of  
 6 hardship or inequity in being required to go forward.” *Landis*, 299 U.S. at 255.

7 The government has not met its burden of establishing a need for a stay of proceedings  
 8 pending the United States Supreme Court’s decision in *Dimaya*. The Ninth Circuit in *Dimaya v.*  
 9 *Lynch*, 803 F.3d 1110, 1120 (9th Cir. 2015), held that the definition of “crime of violence” in the  
 10 Immigration and Nationality Act (“INA”), 18 U.S.C. § 16(b), was unconstitutionally vague  
 11 pursuant to the United States Supreme Court’s holding in *Johnson v. United States*, 135 S. Ct.  
 12 2551 (2015), which held that the “residual clause” of the Armed Career Criminal Act (“ACCA”)  
 13 was unconstitutionally vague. On September 29, 2016, the United States Supreme Court granted  
 14 certiorari to review *Dimaya*. See 2016 WL 3232911. On January 17, 2017, the United States  
 15 Supreme Court heard oral argument in *Dimaya*.

16 Here, however, Petitioner was convicted under 18 U.S.C. § 924(c) for conspiracy to  
 17 commit a Hobbs Act robbery. See ECF No. 1, at 6. Petitioner’s § 2255 petition asserts that the  
 18 Court’s holding in *Johnson*, 135 S. Ct. at 2557, renders the “residual clause” of § 924(c)  
 19 unconstitutionally vague, and thus Petitioner argues that his conviction under § 924(c) violates due  
 20 process. ECF No. 1, at 4. Thus, Petitioner’s conviction and sentence is not directly implicated by  
 21 the holding in *Dimaya*, which applied *Johnson* to the INA. *Dimaya*, 803 F.3d at 1120.

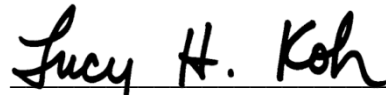
22 Moreover, a stay in this case pending a United States Supreme Court decision will  
 23 prejudice Petitioner in that it will delay this Court’s consideration of Petitioner’s motion to vacate  
 24 his conviction. In contrast to this hardship on Petitioner, the government asserts only that “[a] stay  
 25 will promote efficiency.” ECF No. 5, at 3. However, this falls short of a showing under *Landis* of  
 26 “a clear case of hardship or inequity in being required to go forward.” *Landis*, 299 U.S. at 255.  
 27 Furthermore, this Court and other district courts within this Circuit have denied requests to stay

§ 2255 petitions pending the United States Supreme Court's decision in *Dimaya*. See, e.g., *Than v. United States*, Case No. 5:16-CV-3542-LHK, ECF No. 6 (denying stay pending *Dimaya*); *United States v. Carmaco*, 2016 WL 5897735, at \*1 (N.D. Cal. Oct. 11, 2016) (same).

Accordingly, the government's motion to stay petition is DENIED.

**IT IS SO ORDERED.**

Dated: February 9, 2017



LUCY H. KOH  
United States District Judge